

RESPONSE UNDER 37 C.F.R. §1.105

The undersigned has been advised that 'Pensyb' was listed in the enclosed 1998/99 Elsner pac Jungpflanzen catalog. However, this catalog was only available to European customers.

The undersigned has further been advised that there was no advertising or offers for sale of 'Pensyb' to the American public more than one year before the December 8, 2000 filing date of the present application. The new variety was first advertised and/or offered for sale in the United States in 2003. Additionally, the undersigned has now been advised that plant material was provided to a licensed propagator at the end of 1999 for the sole purpose of establishing mother plants from which commercial 'Pensyb' plants were to be generated in 2000. Commercial sales of 'Pensyb' are believed to have occurred in 2000, less than one year before the filing date of the present application. Further, commercial sales of 'Pensyb' did not occur in the United States until the fourth quarter of 2002.

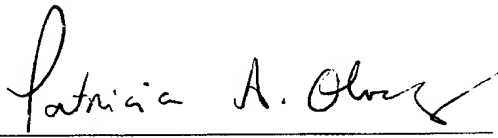
In view of the above, the scant information available in Plant Breeders' Rights publications relating to 'Pensyb' would not have enabled one of ordinary skill in the art to reproduce the claimed plant. Thus, the rejection under 35 §102(b) is wholly inappropriate in this instance.

CONCLUSION

In light of the foregoing, allowance of the claim is respectfully requested.

Respectfully submitted,

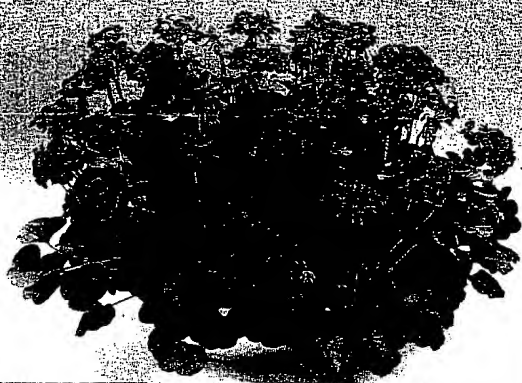
THE WEBB LAW FIRM

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paic® Jungpflanzen 1998/99

paic® Saxonia® Orange, Saxorg®



paic® Saxonia® Crimson, Saxcrim®



paic® Saxonia® White, Saxwin®



paic® Saxonia® Purple, Saxpur®



Elsner paic®
Jungpflanzen Dresden

gegründet 1889

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paic® Dresdner Granatlit, Penro*



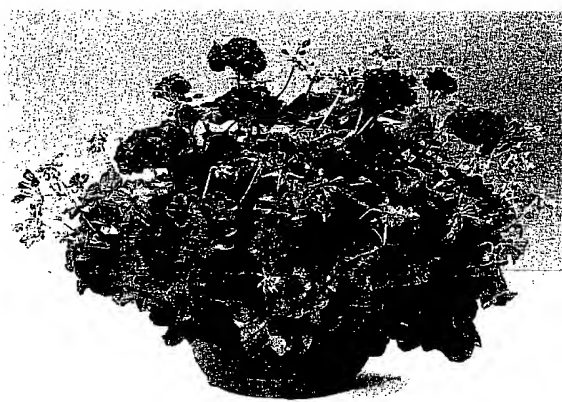
paic® Dresdner Purpalit*



paic® Dresdner Rosalit*



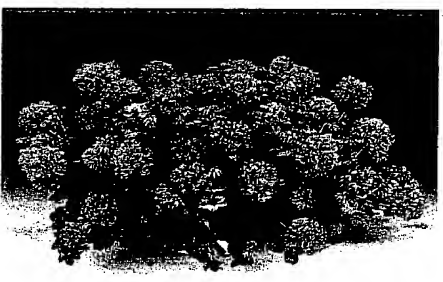
paic® Dresdner Goldenit, Pengol®



paic® Dresdner Nealit 2, Pennea*



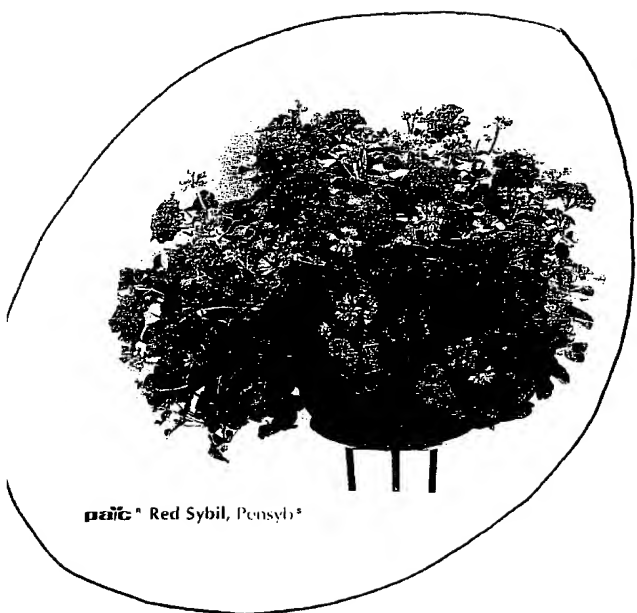
paic® Dresdner Amethyst



paic® Dresdner Coralit*



paic® Dresdner Samat, Penli*



paic® Red Sybil, Pensyb*



paic® Tomcat*

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